

Harpswell Board of Appeals
Minutes of March 25, 2009

Approved

Page 1 of 3

Attendance: Ned Simmons, Chair, Jim Knight, Ellen Lebauer, John Perry and George Every. In addition, Code Enforcement Officer William Wells and Recording Secretary Melissa Moretti were in attendance.

The meeting had been duly advertised in the Brunswick *Times Record*. Mr. Simmons, Chair, called the meeting to order at 6:30 PM at the Harpswell Town Office, 263 Mountain Road, Harpswell.

The Chair read the Agenda and introduced the Board members. He then explained the meeting procedures to the audience.

It was stated that there had been a site visit on Monday at the Wallace property. Present were Mr. Simmons, Mr. Perry and Ms. Lebauer. Mr. Simmons had continued on to the LaPlaca property alone as he had not previously visited the site.

1. Matter of Damian R. LaPlaca, Request for Undue Hardship Variance under §14.1.3.2 of the Basic Land Use Ordinance, Tax Map 27 Lot 91, 17 Goodwin Lane, Orr's Island.

Participating in Hearing – The Board members present and the Code Enforcement Officer, Mr. Wells.

The Chair said that the matter was a continuation from the previous meeting, and the Code Enforcement Officer had an update for the Board. [It should be noted that Mr. LaPlaca was not present.] Mr. Wells informed the Board that Mr. LaPlaca had reenlisted the services of his surveyor and Mr. Wells had met with them, both at the site and in the Code Enforcement Office. A plan was agreed upon by all parties that would put Mr. LaPlaca's situation in total compliance; Mr. Wells said he had allowed Mr. LaPlaca 30 days from the present meeting date to become compliant. The Chair clarified with Mr. Wells that there was no continuation and that the variance process was over; he would be in compliance in 30 days.

There was discussion among the Board members regarding the discharge of the matter without a request from the Applicant. Mr. Knight thought there would have to be a formal withdrawal by the Applicant for the protection of the Board. Mr. Wells clarified that he had continued the matter from this Board of Appeals meeting (March 25, 2009) to the next meeting (in approximately one month). It was decided that if Mr. LaPlaca sent a letter to the Board stating he was in compliance, and Mr. Wells attested to the fact that the work had been done, the matter would have been appropriately dealt with.

Mr. Knight moved that the Board continue the matter for one month. The Board voted unanimously for continuance. The Chair clarified with Mr. Wells that Mr. LaPlaca would move the stairs.

2. Matter of Lloyd Wallace, Request for Disability Variance under §14.1.3.3 of the Basic Land Use Ordinance, Tax Map 46 Lot 28, 42 Pinkham Point Road, Harpswell.

Participating in Hearing – The Board members present and the Code Enforcement Officer, Mr. Wells.

The Chair read through the materials provided to the Board. Mr. Wells, the Code Enforcement Officer, presented Mr. Wallace's application.

Mr. Wells addressed the Board and presented a concept of how to deal with disability variances in the future. He stated that the Board had other requests such as this (ADA related) in the past, and suggested that his office could issue a permit for a temporary disability variance when this type of situation was known to be temporary. He suggested that, as the Code Enforcement Officer, he could issue a memo describing the situation to the Board and, if it agreed, his office could issue a permit with the stipulation that if the disability was no longer an issue, then the structure/apparatus/etc. would have to be dismantled.

The Chair asked if the Code Enforcement Officer had the authority to act in that way. Mr. Wells said that as long as the Board agreed, he would provide them with particulars of the individual situation in a memo, and the Board could also elect to do a site visit. He mentioned that the population in Harpswell was aging, and that this issue may become more prevalent. The Chair suggested Mr. Wells approach the Town Attorney with the idea; Mr. Wells agreed.

There was further discussion by the Board members, and the suggestion was made that, by going through the Code Enforcement Office instead of before the Board of Appeals, the applicant would not have to pay a fee. Mr. Wells informed the Board that the Planning Board approached the idea by doing a sketch plan review; there was no fee due from the applicant in that instance. In that way, if there was more information needed by the Planning Board, the applicant could provide it before there was a fee paid.

Harpswell Board of Appeals
Minutes of March 25, 2009

Approved

Page 2 of 3

Mr. Knight suggested the Board vote on the subject after Mr. Wells presented it to the Town Attorney. He reiterated that the possibility of time constraints to a disabled applicant could be a hindrance to them for receiving the structure/apparatus/etc. in a timely manner. Mr. Wells said the Code Enforcement Office could do a periodic inspection at the property to ensure that the structure was removed if no longer necessary. The Board members were concerned that the ordinance would not allow them to act in that way, and Mr. Wells suggested that, if it would require an ordinance change, the process should begin now to be ready for next year's Town Meeting. The Board recommended that Mr. Wells approach the Town Attorney with his suggestions; he agreed.

With regard to Mr. Wallace's situation, Mr. Wells reiterated that he thought Harpswell's code should allow a disability variance to happen on a temporary basis. The Board members discussed what they had observed at the site visit, concluding that it would be difficult for anyone to get in and out of the house under normal circumstances due to the topography, and the ramp built would have to be a long one.

Mr. Wells stated that Mr. Wallace had previously qualified for the community grant program, and his septic system had been replaced. He reiterated that Mr. Wallace was in need of a ramp, and the criteria had been met.

The Chair asked the Board if there were any further comments; there were none. He asked if there were any comments from the audience.

Steve Morrow of Westbrook, and a builder for Sterling Builders, addressed the Board. He stated that his company built many ramps for the Alpha One program. He stated that he had attended the site visit, but arrived late and missed the Board members. He confirmed that Mr. Wallace was in need of a ramp - he had a knee replacement and had also had a stroke on the left side. Mr. Morrow explained that the type of ramps his company builds for the Alpha One program were built to be removable; he described their construction and said that they get reused when no longer needed at a location. He reminded the Board that, by ADA law, they had to allow a disabled person the ability to get in and out of their house.

The Chair confirmed that the Board was ready to make a decision, and he completed the Notice of Variance Decision form item by item. [A copy of the Notice of Decision can be found in the Code Enforcement Office/Planning Office files.]

After the form was complete, the Chair moved that the person with the disability did reside in the dwelling. It was seconded, there was no discussion, and the motion carried unanimously. He then moved that the person with the disability regularly used the dwelling. It was seconded, there was no discussion, and the motion carried unanimously. The Chair moved that the installation of equipment or the construction of structures proposed under the application was necessary for the access to or egress from the dwelling by the person with the disability. It was seconded, there was no discussion, and the motion carried unanimously. The Chair made the motion that the disability did not have a known duration. It was seconded, there was no discussion, and the motion carried unanimously.

He then made a motion that the Board attached a condition that the variance would expire when the person with the disability no longer resided in the dwelling. There was some discussion among the Board members whether wording should be included to address the dismantling and removal of the proposed temporary structure. The motion was rephrased to state that the variance would expire and the applicant would then be required to remove the ramp once the person with the disability no longer occupied the residence.

Mr. Wells addressed the Board, and stated a supposition that the applicant might continue to occupy the residence although they had recovered from the disability. There was further discussion regarding the wording of the motion. The Chair withdrew his previous motion.

Mr. Every asked, because the situation concerned a tenant, if the landlord would have to go through the permitting process again if the next tenant was also a person with a disability. The Board decided that, technically, the landlord would have to go through the process again; however, the Board was granting a variance, and a variance would go with the property. There was further discussion among the Board members.

The Chair moved that the variance run for as long as a person with a disability requiring the ramp occupied the property. It was seconded, there was no further discussion, and the motion was approved unanimously. The Chair then moved that the property owner be required to remove the ramp when the variance had expired. It was seconded, there was no further discussion, and the motion was approved unanimously.

The Chair moved that the Board of Appeals find in favor of the Applicant for the granting of the variance; it was seconded, there was no further discussion and the motion was approved unanimously. Mr. Wells said that he could issue the permit the following day, and confirmed with Mr. Morrow that he could begin his part of the project, as well.

Harpswell Board of Appeals
Minutes of March 25, 2009

Approved

Page 3 of 3

There was discussion regarding the reappointments of Board members by the Board of Selectmen, which was usually done in April.

3. Other Business

Consideration of Minutes: Meeting of February 25, 2009

The last sentence of the Minutes stated that the Board would sign the Notice of Decision for Variance when it became available [with regard to Orr's Island Library Association, Inc., a previous Applicant]. The Chair produced the form, and the Board members signed it. Mr. Knight also noted a grammatical correction on page 2 of the Minutes. He then moved to accept the Minutes as corrected; it was seconded, there was no discussion, and the Minutes, with correction, were accepted unanimously.

The Chair presented additional items for discussion: a review of the Board of Appeals Application and the Notice of Decision form. The Board agreed that the Notice of Decision form, the ordinance and the Application should agree; they were presently incongruous. Mr. Knight, as Board secretary, proposed to meet with the Recording Secretary to address the issue in order to create separate versions of the forms which would agree with the ordinance in continuity. There was discussion regarding the fact that the Notice of Decision form, which had been presented to the Board by the Town Attorney, was not uniform in the way it addressed items in the ordinance. Mr. Knight requested that the Recording Secretary provide him with blank Notice of Decision forms [this was done after the meeting]. The Chair said he would also work with Mr. Knight to "customize" the forms.

The Board signed the Notice of Decision form for the Lloyd Wallace matter.

The Chair addressed an additional item, brought to his attention by the Recording Secretary, with regard to the latest version of the Board of Appeals By-Laws. There was discussion among the Board members as to the date of the latest revision; it was clarified that there had been changes made by the Town Attorney which necessitated an amended version in 2007 that had not been distributed to the Board members. The Recording Secretary explained that the only place she had seen the 2007 version was on the computer, and it was decided that she would make copies of that version and distribute it to the Board members.

Discussion of Residency Requirements of Board Members

The Board members agreed that they did not have the authority to dictate who should serve on the Board; the matter was under the jurisdiction of the Board of Selectmen. The Chair suggested the By-Laws could be amended to reflect that. He said that the ordinance did not presently address the matter of residency, and the State law did not require residency. Mr. Knight said he had checked on the Harpswell Town committee residency requirement; there was no policy requiring a committee member to reside in the Town. It was "an individual case issue, and the Selectmen's whim." He also stated that he concurred with what the Chair had said.

There was discussion among the Board members regarding the Town committee residency issue. Mr. Knight reiterated that the community had no charter, and the issue was not addressed in the local ordinances. The Chair clarified that the Board of Selectmen would have to have cause to dismiss a Board of Appeals member; it would not be a "whim". The Board recognized that boards were different than committees. There was further discussion. The Chair stated that, if the Selectmen wanted to change the ordinance, the Board of Appeals could change their By-Laws to reflect what the ordinance said, and that was the consensus of the Board.

The Chair adjourned the meeting at 7:36 PM.

Respectfully Submitted,

**Melissa Moretti
Recording Secretary**